IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Bail Appl..No. 6968 of 2007()

CRIME NO.497 OF 2007 KONNI POLICE STATION

: PETITIONERS/ACCUSED 2 & 1:

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1. PRADEEPKUMAR,
PRATHIBHALAYAM, IRAVON, KONNI, PATHANAMTHITTA.

2. MOHANDAS,
JAITHRAM, IRAVON, KONNI, PATHANAMTHITTA.

BY ADV. SRI.C.S.MANILAL

RESPONDENTS:

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6968 of 2007

Dated this the 26th day of November, 2007

ORDER

This application is for anticipatory bail. Accused Nos.4 and 1 are petitioners 1 and 2 in this petition. So far as accused 1 is concerned, he had earlier come before this Court with an application for anticipatory bail and by order dated 31.10.07 in B.A.No.6581 of 2007, his application for anticipatory bail was dismissed. The 3rd accused, the wife of the 1st petitioner herein who was the 1st petitioner in that bail application, was granted anticipatory bail.

2. The 1st petitioner in this petition is the 4th accused and he is also a relative of the 1st accused/2nd petitioner herein. The said 4th accused contends that he is absolutely innocent and his position is similar to the 3rd accused who has already been granted anticipatory bail by this Court.

3. The learned Public Prosecutor submits that the State has no objection in anticipatory bail being granted to the 4th accused, ie. the 1st petitioner herein on identical terms and conditions as were imposed on the 3rd accused in the order referred above. I am satisfied that the 1st petitioner can be granted anticipatory bail.

4. What remains to be considered is only the renewed prayer of the 1st accused for anticipatory bail. It is trite that a person who approaches this Court with a renewed request for anticipatory bail

must show satisfactory reasons as to why the matter deserves fresh consideration. Change of circumstances has got to be shown by such a petitioner. What is the change of circumstance ? The learned counsel for the petitioners only submits that in the earlier bail application, there was an observation that the learned Public Prosecutor reports that the 2nd petitioner is involved in an earlier instance of crime relating to Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. This statement, it is submitted, is incorrect. The 2nd petitioner is not involved in any such crime.

5. The learned Public Prosecutor submits that this is not a valid ground for review of the decision already taken. The learned Public Prosecutor submits that it is true that for such instance, no separate crime was registered against the 2nd petitioner but that does not mean that the crime has not been committed. The matter was compounded accepting fee for composition paid by the 2nd petitioner. That is no reason to jump to the conclusion that the earlier statement made by the learned Public Prosecutor and recorded in the order dated 31.10.07 is incorrect. The learned counsel for the petitioners submits that the second instance of crime relied on by the prosecution is also not justified, as can be seen from Annexure-V order granting anticipatory bail to him in such crime. It is not necessary for me to go

into details of that crime. That also shows that the 2nd petitioner's vehicle was involved in an attempt to violate the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, though the allegation was against the driver of the vehicle, that too inter alia under Section 308 I.P.C. These circumstances, according to me, do not represent any such valid change of circumstance which can persuade this Court now to consider the application for anticipatory bail afresh notwithstanding the dismissal of the prayer of the 2nd petitioner for anticipatory bail by the earlier order dated 31.10.07.

6. In the result:

a) This bail application is allowed in part;

b) The prayer for anticipatory of the 2nd petitioner (1st accused) is rejected. Needless to say, if the 2nd petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously;

c) The petition is allowed in so far it relates to the 1st petitioner. The following directions are issued under Section 438 Cr.P.C in favour of the 1st petitioner.

i) The 1st petitioner shall appear before the learned Magistrate at 11 a.m on 03.12.2007. He shall be enlarged on regular bail on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The 1st petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 1 p.m on 04.12.2007 and 05.12.2007 and thereafter between 10 a.m and 12 noon on all Mondays and Fridays for a period of two months and thereafter as and when directed by the Investigating Officer in writing to do so;

iii) If the 1st petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

iv) If the 1st petitioner were arrested prior to his surrender on 03.12.2007 as directed in clause (1) above, he shall be released from custody on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on 03.12.07.

(**R.BASANT, JUDGE)**

rtr/-